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IN THE

DEC 26 1941

Supreme Court of the United States

OCTOBER TERM, 1941
No. 142

COLUMBIA RIVER PACKERS ASSOCIATION, INC.,
A CORPORATION,

Petitioner,

vs.

H. B. HINTON, GEORGE BAMBRICK, J. B. BRANDT,
CHARLES J. MACKIE, GLENN MURDOCK, FERDINAND
SANDNESS, P. J. BARTON, JACK CURTIS, LEROY
CHENOWITH, WALTER WEAVER, O. TANNER, O. H.
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ANDY TOPPI, CHARLES PILTON, CHARLES MARKS,
CLYDE CHASE AND PACIFIC COAST FISHERMEN'S
UNION, ITS OFFICERS AND MEMBERS,

Respondents.

RESPONDENTS' BRIEF

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Respondents.

RESPONDENTS' BRIEF

OPINIONS BELOW

The opinion of the United States District Court for the District of Oregon is reported in *Columbia River Packers Association v. Hinton*, 34 F. Supp. 971, and also appears in the Record at pages 43-47. The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported in *Hinton v. Columbia River Packers Asso-*

ciation, 117 F. (2d) 310, and also appears in the record at pages 145-155.

JURISDICTION

Petitioner invokes the jurisdiction of this Court under Section 240 (a) of the Act of February 13, 1925, Title 28, section 347, U. S. C. A. The petition for certiorari was granted by this Court on October 20th, 1941.

STATUTES INVOLVED

This case involves three statutes of the United States, namely:

- (1) Norris-LaGuardia Anti-Injunction Act
(Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. Sec. 101 et seq.)
- (2) The Sherman and Clayton Antitrust laws
(Act of July 2, 1890, c. 647; and Act of Oct. 15, 1914, c. 323, 15 U. S. C. Secs. 1, 2, 7, 12, 14, 15, 17)
- (3) The Fishermen's Cooperative Act
(Act of June 25, 1934, c. 742, 47 Stat. 1213, 15 U. S. C. Secs. 521, 522)

QUESTIONS PRESENTED

- (1) Whether or not this is a case arising out of a labor dispute within the meaning of the Norris-LaGuardia Act;
- (2) Whether or not the bill of complaint and findings of fact show a cause of action for any relief under the antitrust laws.

STATEMENT OF CASE

Proceedings in this case were instituted upon a complaint filed on May 4th, 1939, in the federal District Court of the District of Oregon seeking treble damages, declaratory and injunctive relief under the antitrust laws against the respondents. It appears from the record that a temporary restraining order was issued by the District Court. (Findings of Fact XIII, XLI, R. 64, 90) After hearing, the Court entered a decree awarding damages, adjudging certain contracts of the respondents to be unlawful, and granting a permanent injunction prohibiting any interference by the respondents with the business of the petitioner. (R. 106-111)

The complaint was amended to conform to the evidence. (R. 47-50) The petitioner waived damages and the decree was amended accordingly. (R. 121-124)

Upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, the Court reversed the decree of the District Court and remanded it to the District Court for further proceedings in accordance with its opinion (R. 154-155), whereupon the petitioner filed its writ of certiorari in this Court. In the meantime, and up until the present time, the decree of the District Court is in effect. (R. 156)

The record in this case consists of the complaint and answer, the opinion of the District Court, its findings of fact, conclusions of law and decree, and the opinion of the Circuit Court of Appeals. From this record the following facts appear.

The petitioner is an Oregon Corporation having its principal place of business at Astoria, Oregon, and is engaged in the purchasing, processing, canning, and distribution of fish and other marine products taken from

the Pacific Ocean and adjacent waters. It distributes its products in the various states and territories of the United States and in foreign countries. (Findings of Fact I-V incl., R. 54-58)

The petitioner provides ~~more than~~ 60% of all of the processed fish produced in Oregon, as well as a very substantial amount of the processed fish produced in Washington and Alaska. (Findings of Fact XXI, R. 76) It is engaged in commerce among the several states and foreign nations. For some time in the past and up until the institution of this suit, the petitioner had been a member of the Commercial Fisheries Association, which is an organization of packers and dealers of fish and other marine products on the Pacific Coast. (Findings of Fact XXXIX, R. 89)

The respondent, Pacific Coast Fishermen's Union, hereinafter, referred to as the Union, is an unincorporated association of fishermen, formed in 1932, originally of troll fishermen, fishing in the international waters opposite the states of Oregon, Washington and California, and the Territory of Alaska. At the time of the complaint, it had assumed jurisdiction from Alaska to as far south as Crescent City, California. (Findings of Fact XV, XVI, R. 66-67)

The individual respondents, except Charles Marks and Clyde Chase, are members and officers of the Union. Hinton and Bambrick are, respectively, president and secretary of the union. Chenowith and Weaver are officers of the Umpqua Local of the Union. (Findings of Fact VI, R. 58-59) The respondents, Marks and Chase are, like the petitioner, fish dealers and processors. (Findings of Fact XLIII, R. 91)

The issues in this case revolve about the relations between the fishermen, their union, and the petitioner,

especially during the 1939 fishing season for shad in the Smith and Umpqua rivers at Oregon. These waters are one of the principal sources of the supply of shad and may be fished during a sixty-day period each year beginning April 20th. (Findings of Fact VIII, IX, R. 61)

Since its formation, the Union has functioned as a collective bargaining agency for the fishermen. It has entered into contractual relationship with the petitioners and other fish processors. These contracts made on a local basis, recognize the Union as the bargaining agency and provide for the prices to be paid for various kinds and grades of fish. In addition, these contracts usually carried a clause providing as follows:

"It is further understood by all parties herein that the Union members shall not be required to work with and/or alongside of non-union employees."

It is agreed that this language means in substance that within the local area where such contracts are made, no buyer signing them, is permitted to purchase fish from any person not a member of the Union, or to service and ice boats of such non-member persons. (Findings of Fact XXXVI, XLV, R. 87, 92)

The constitution and by-laws of the Fishermen's Union provide that

"Union members shall not deliver catches outside of Union agreements." (Findings of Fact XLVI, R. 83, 93)

Up until the institution of the suit, such agreements had been procured with substantially all of the buyers of fish located in the State of Oregon and along the Columbia River in the State of Washington. (Findings of Fact XVIII, R. 71)

It was not disputed that the Union had in its membership 100% of the fishermen in the area of the Smith and Umpqua rivers and 90% of the troll fishermen along the Pacific Coast, exclusive of the Columbia River and its tributaries. (Findings of Fact XVI, R. 67) But it was also found that the opening of new fishing grounds for albacore was bringing a great infusion of new fishermen and the Union wished to reserve this fishing for its members. (Findings of Fact XLVI, R. 93)

The fish catching industry from which the Union draws its membership is composed of three types of individuals. There are fishermen who own their own boats and equipment; there are fishermen who lease their boats and equipment; and there are fishermen who work as crews on the boat. Powered boats are used and a supply of ice and food is taken aboard at the beginning of the voyage which usually lasts from three days to two weeks, and which is concluded by returning to a fish station where the fish are sold and delivered at the established prices. The fish are caught with hooks and lines. (Findings of Fact XXXV, R. 85)

Among the fishermen from whom the plaintiff procured its fish were five members of the Union who leased their boats from the petitioner, using power boats heretofore belonging to the petitioner, sold to them by the petitioner under the agreement that said fishermen would sell and deliver their fish caught in the Smith and Umpqua rivers to the petitioner, until the purchased price was paid. In no case had any of these five fishermen paid for the boats. In one case the sale had been consummated and a chattel mortgage taken. (Findings of Fact XIV, XXXIV, R. 65, 84)

Similarly, the respondent fish dealers, Marks and Chase, owned and operated separate fleets of fishing

boats under arrangements whereby members of the Union leased these boats upon the understanding that they would deliver their catch to the owners. (Findings of Fact XLIV, R. 92)

The controversy arose when the petitioner, at the opening of the 1939 fishing season in the Umpqua area, withdrew from the Commercial Fisheries Association, and refused to sign the agreement with the Union. The petitioner was willing to accept every other provision of the agreement with the Union, with the exception of the exclusive buying clause. There was no other controversy between the plaintiff and the Union or any of its members over the price of fish to be paid, or the price of ice, or other supplies to be sold, or any other matter entering into transactions between the petitioners and any of the respondents save and except only the requirement by the Union and its members that the exclusive contract be entered into. (Findings of Fact XXII, R. 76)

Upon the refusal of the petitioner to enter into such agreement, the Union notified its members that they were not to deliver any fish to it. The Union did not use any fraud or violence. (Memorandum opinion, R. 41) The only pressure exercised was that Union members who failed to abide by the provisions of their organization would be subject to fines and other disciplinary action. (Findings of Fact XXXII, R. 83)

From April 20th to April 29th the petitioner was able to secure fish. But upon the action by the union, all fishermen in the Umpqua and Smith rivers refused to sell fish to the petitioner, until the Union was prevented from carrying on its economic pressure against the petitioner by the temporary restraining order, subsequently made permanent and now in effect. (Findings of Fact XI, XII, XIII, R. 62-65)

In addition, the Union induced other unions of maritime workers to refuse to man the ships of the plaintiff. (Findings of Fact XLVII, R. 94) The Union is affiliated with the Maritime Federation of the Pacific which includes other labor organizations such as the International Longshoremen and Warehousemen's Union, Alaska Fishermen's Union, United Fishermen's Union, Cannery Workers Union, Marine, Cooks and Stewards Union, and Ships Radio Operators Union. (Findings of Fact XXXVII, R. 88)

Four important findings were made by the District Court:

(1) That there is an open and competitive market for fish and other marine products at the Umpqua River and also along the seaports of the Pacific Coast. (Findings of Fact XIX, R. 74); (2) that the Union keeps its charter open and will admit to membership any bona fide fishermen engaged in catching fish in the rivers of, and in the Pacific Ocean adjacent to, the states of Washington and Oregon, so long as such persons are of good moral character and will abide by the constitution and by-laws of the Union requiring exclusive membership therein (Findings of Fact XLVIII, R. 95); (3) that the Union is willing to sign the exclusive agreement with any and all of the fish dealers including the petitioner and to permit its members to deliver fish to the petitioner upon the terms of the agreement (Findings of Fact XII, R. 62); and (4) that there is no evidence tending to show that the wholesale and retail prices paid by consumers have been enhanced by the activities of the defendants. (Findings of Fact XXXVIII, R. 88-89)

The District Court also made sketchy findings of three other instances in past years where the Union had refused to deal with fish buyers who would not accept

exclusive dealings and of one instance where the Union excluded a fisherman who would not give up membership in another organization. (Findings of Fact XVI, XVII, R. 67-70)

Upon these facts, the District Court concluded that none of the fishermen were in an employment relationship with the respondent or any other fish dealer; that the case was not one arising out of a labor dispute within the meaning of the Norris-LaGuardia Act; and that the exclusive contracts, together with the constitution and by-laws of the Union, were intended to create a monopoly in violation of the antitrust laws. (Conclusions of Law, R. 95-104)

The Circuit Court of Appeals, however, ruled that the case did arise out of a controversy over terms and conditions of employment in the fishing industry and that the requirements of the Norris-LaGuardia Act had not been complied with. It thereupon vacated the injunction and remanded the case to the District Court for further proceedings in view of the case of *United States v. Hutcheson*, 312 U. S. 219, 61 S. Ct. 463.

SUMMARY OF ARGUMENT

I

This is a case growing out of a labor dispute within the meaning of the Norris-LaGuardia Act. Notwithstanding alleged violations of the antitrust laws, the Norris-LaGuardia Act applies to labor disputes between persons who are engaged in the same industry, trade, or occupation, or who have a direct or indirect interest therein, regardless of whether or not the disputants stand in the proximate relation of employer and employee. The terms of the decree enjoin the respondents

from doing the very things which the Act protects. The defendants in this case include persons in a direct employer-employee relation with the plaintiff, employees of other employers in the same industry, an association of such employees, certain other employers in the same industry and other persons having a direct interest in the industry. All of these defendants are persons participating in a dispute over terms and conditions of employment and over questions concerning the association and representation of employees in the industry. Independent fishermen not directly employed by the plaintiff, or by other employers in the industry, nevertheless, have a unity of interest with employees as co-workers, promoting a common cooperative venture, in the same industry.

II

The record in this case fails to show any violations of the antitrust laws upon which any relief, injunctive or otherwise, could be granted. All portions of the decree, consisting of declaratory and injunctive relief, are before this Court.

The only issue in this case is whether a combination of fishermen may endeavor to perfect their organization to achieve, through their organization, control over the capture of fish and the delivery thereof to fish dealers. Other issues such as prices or price-fixing, exclusion of competitors, or combinations with non-producers, are not before this Court. The combination of the fishermen into the respondent organization is immune from the antitrust laws, whether it be regarded as a labor union or as a fishermen's cooperative. The immunity of labor organizations seeking all-union conditions throughout an industry is clearly settled.

The federal statute authorizing fishermen's cooperatives, by its legislative history and express terms, favors the complete organization of fishermen into cooperatives. The judicial decisions dealing with producers' cooperatives have given full effect to the same policy and protected exclusive dealings between members and buyers. This case does not involve any illicit combination of producers with other groups, or any specific practices in restraint of trade.

The fundamental issue in this case is this: The plaintiff, a large corporation selling to consumers and buying from fishermen 60% of the fish produced in the state of Oregon and a very substantial amount of the fish produced in Washington and Alaska, is confronted with the economic action of a fishermen's cooperative that has secured 90 to 100% membership among the fishermen, exercising their economic strength to protect their cooperative organization. The plaintiff wants the help of the courts to break the cooperative and to be free to use its own uncontrolled economic power against the disbanded fishermen.

ARGUMENT

I. THIS IS A CASE GROWING OUT OF A LABOR DISPUTE WITHIN THE MEANING OF THE NORRIS-LAGUARDIA ACT.

The Circuit Court of Appeals for the Ninth Circuit held, and it must be conceded, that, despite the alleged violations of the antitrust laws, if this is a case arising out of a "labor dispute," then the District Court did not comply with the jurisdictional requisites of the Norris-LaGuardia Act, and its decree awarding an injunction must be vacated. (R. 149)

The decree in unlimited terms, enjoins the respondents and "all persons in active concert with them" from "in any manner interfering with the legal prosecution by the plaintiff of its business"; from "in any manner interfering with the plaintiff in operating its canneries and other plants and facilities and its steamships, in the loading, unloading, outfitting, dispatching or operating the same or in transporting, loading, unloading, shipping and trans-shipping or otherwise handling, freezing, processing, or selling fish or other marine products or in employing employees in any way connected with the business of the plaintiff anywhere."

The decree thus enjoins the respondents from doing the very things which the Norris-LaGuardia Act protects. It enjoins them from "ceasing or refusing to perform any work or to remain in any relation of employment"; and from "advising, urging or otherwise causing or inducing other persons to cease or refuse to" perform any work or to remain in any relation of employment. [29 U. S. C. Sec. 104 (a) (i)]

Our inquiry then turns to whether the decree is made in a case "involving or growing out of any labor dispute" and prohibits "any person or persons participating or interested in such dispute."

The definitions of "person" and of "dispute" are interdependent; a case involves or grows out of a labor dispute when

"the case involves any conflicting or competing interests 'in a labor dispute' (as hereinafter defined) of persons 'participating or interested' therein (as hereinafter defined)." [29 U. S. C. Sec. 113 (a) (3)]

The Act defines "persons participating or interested" as follows:

"A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers of employees engaged in such industry, trade, craft, or occupation." [29 U. S. C. Sec. 113 (b)]

A labor dispute is defined as follows:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." [29 U. S. C. Sec. 113 (c)]

It is certainly clear that the relief is sought against all of the respondent-defendants in this case. They are persons who are engaged in the same industry, trade or craft. They have a direct or indirect interest therein; and they are members, officers or agents of an association composed in whole or in part of employers or employees engaged in the industry.

The defendants can be classified as follows:

(a) Owners of fishing vessels and equipment, themselves engaged in the catching of fish on such vessels, and members of the Union;

(b) Lessees of fishing vessels and equipment, themselves engaged in the catching of fish on such vessels, and members of the Union;

(c) Crews of such fishing vessels working with the owners or the lessee-operators, and members of the Union;

(d) Officers of the Union, Chenowith and Weaver;

(e) The defendant Union, which is composed in part, if not in whole, of employees in the fishing industry;

(f) The defendants Chase and Marks, who are fish dealers, engaged in the same industry. They own and operate a fleet of fishing vessels, employing thereon members of the Union;

(g) The unnamed parties, acting in concert with the named defendants, who are members of unions of maritime employees on fish processing vessels and owned and operated by the petitioner-plaintiff.

The petitioner-plaintiff is engaged in the fishing industry as a fish dealer or buyer and processor and distributor.

The District Court found these facts, but added in words of description that the fishermen are:

"Directly employed by no one, but are producers and independent contractors who fish when and where they choose, and dispose of their fish to whomsoever they select, limited only by a voluntary agreement among themselves as members of the defendant, the Pacific Coast Fishermen's Union."
(R. 56)

It concluded that there could be no "labor dispute" over "conditions of employment" between the petitioner and independent contractors. (R. 43-44, 99)

But an analysis of the facts found by the District Court, as distinguished from its mixed conclusions of law embodied in the findings of fact, reveal that a direct

employer-employee relationship is involved in this case. The District Court found that at least five of the fishermen, members of the Union, were using boats heretofore belonging to the plaintiff under the agreement that said fishermen will sell and deliver their fish to the plaintiff until their purchase price is paid for. None of the boats had been paid for. In one case a chattel mortgage had been taken by the plaintiff, under the same agreement. (R. 65) An unnamed number of the fishermen members of the union were fishing from boats owned and operated by the defendants Marks and Chase, also fish dealers, under a lease arrangement, with the same understanding that their catch would be delivered to the boat owner. (R. 92) It further appears that the fish dealers, like the plaintiff, provide ice and other supplies to their fishermen at the beginning of the voyage (R. 87) and provide services for the unloading of the fish at the end of the voyage, such as net racks, tanning tanks and mooring places. (R. 62) The members of the crew of these boats (R. 56) are paid on a "lay basis," that is, a percentage of the price received for the catch.*

We submit that these defendants, lessees and crew members, are employees of fish buyers, including the plaintiff, who own the vessels on which they work and have exclusive control over the catch. We think the decisions under the National Labor Relations Act are in point and helpful. That Act, like the Norris-La Guardia Act, deals with "any employer" and "any employee"; and it contains substantially the same definition of a "labor dispute" as Section 13 (c) of the Anti-Injunction Act. [29 U. S. C. Sec. 152 (2) (3) (9)].

* No findings were made one way or other on this method of payment of crew members, but it can be presumed that it follows the practice of the fishing industry. See, *in/ra* p. 18.)

The National Labor Relations Board has held that fishermen, including captains and all crew members, of boats owned by fish buyers, are employees of the boat owner.

Trawler Maris Stella, Inc. 12 NLRB 415

Federated Fishing Boats of New England and New York, Inc., 15 NLRB 1080

Cape Cod Trawling Corp., 23 NLRB 208

It has repeatedly been held that the compensation of such fishermen is in the nature of wages.

U. S. v. Laflin, 9th Cir., 24 F. (2d) 683.

U. S. v. Peterson, 9th Cir., 28 F. (2d) 29.

The Elk, 1938 A.M.C. 715.

Upon this record, there can be no question as to the employee status of the fishermen employed by the defendant fish buyers, Marks and Chase. The fact that the plaintiff employs the device of a lease in the operation of its boats does not alter the fundamental control it exercises over the fishermen who work on these boats and deliver their catch to it. Nor is this status altered by the nature of the industry which is such that once the men leave the plaintiff's docks and until their return, they decide for themselves where and how to conduct their fishing. In the case of *Harry Murphy, et al.*, 37 NLRB No. 80, the Board held persons to be trucking employees of a logging company, saying:

"The lack of detailed supervision by the company over the trucking work does not seem significant to us, for the work is not readily susceptible of, or normally subject to, detailed supervision, even when performed by a person conceded to be an employee."

The conclusion of the Trial Court expressed as a finding of fact that each of the fishermen "operates his business according to his own desires uncontrolled by the plaintiff or any one else" except the Union, (R. 60) is plainly inconsistent with its own findings of control of the fishermen using boats belonging to fish buyers, including the plaintiff.

The Norris-LaGuardia Act must be construed to inquire into the substance of relations.

Lauf v. E. G. Shinner & Co., 303 U. S. 323, 58 S. Ct. (578).

Milk Wagon Driver's Union v. Lake Valley Food Products, Inc., 311 U. S. 91, 61 S. Ct. 122.

We urge the reasonable principle set forth by the National Labor Relations Board as a guide to the determination of employee-employer relations in the face of diverse contractual relations and mixed elements of control.

Thus the Board has held:

"We are required in administering the Act and in effectuating its policies to inquire into the substance of relationships. As the Board has before stated in another case involving the question of alleged independent contractors: We have had occasion to point out that the statutory definition of the word 'employee' is of wide scope. As defined in the Act, the term embraces 'any employee' that is, all employees in the conventional as well as legal sense except those by express provision excluded. The primary consideration is whether effectuation of the declared policy and purposes of the Act comprehend securing to the individual of the rights guaranteed and the protection afforded by the Act. The matter is not conclusively settled by a contract

which adverts to and purports to establish the status of such persons other than as employees." *James E. Stark Company*, 33 NLRB No. 186.*

A similar rule has been laid down by the Wage-Hour Division for the determination of employee status in the case of mining leases, under the Fair Labor Standards Act (Act of June 25, 1938, No. 718, c. 676; 52 Stat. 1060; 29 U. S. C. Sec. 201-219) (See *Wage-Hour Release* No. 928, July 27, 1940.

* In addition to the fishing cases cited above, we have collected the Board decisions on "independent contractors." Those finding an employment relation are: *Metro-Goldwyn Mayer Studios*, 7 NLRB 662, 686-690, professional writers working exclusively for one company; *Seattle Post-Intelligencer Department of Hearst Publications*, 9 NLRB 1262, 1270-1275, newspaper distributors own their own trucks, hiring their own assistants, exclusively for one company; *KMOX Broadcasting Station*, 10 NLRB 479, free lance announcers and radio artists; *Connor Lumber & Land Co.*, 11 NLRB 776, 786-787, lumber workers under subcontractor with entire control but working on premises of company; *Interstate Granite Corp.*, 11 NLRB 1047, colorable lease of department to foreman disregarded; *American Scale Co.*, 19 NLRB 124, colorable lease; *Sun Life Insurance Co.*, 15 NLRB 817, insurance canvassers; *Park Floral Company*, 19 NLRB 403, colorable lease of greenhouses; *Edward F. Reichelt, et al.*, 21 NLRB 263, 275-281, colorable lease of fur business; *The Kelly Company*, 34 NLRB No. 156, two truck owners working exclusively for company held employees, one working for others as well held independent contractor; *Phelps-Dodge Corp. Copper Queen Branch, Smelter Division*, 34 NLRB No. 103, crew working on equal share tonnage basis; *Post Standard Company*, 34 NLRB No. 32, newspaper distributors; *Hearst Publications, Inc. (Los Angeles Examiner Dept.)*, 25 NLRB No. 74, district managers of circulation department under terms fixed by custom and oral understanding; *Stockholders Publishing Co.*, 28 NLRB No. 151, newspaper distributors; *Life Insurance Co. of Virginia*, 29 NLRB No. 44, insurance debit collectors; *Supreme Liberty Life Insurance Co.*, 32 NLRB No. 18, industrial insurance agents, canvassers and "special agents"; *Twentieth Century Fox Films*, 32 NLRB No. 130, artists who work on premises exclusively for one company held employees, those working for more than one held not employees; *James E. Stark Co.*, 33 NLRB No. 186, lumber crew working under contractor at hours and wages fixed by company; *John Yasek*, 37 NLRB No. 20, truckers for lumber company; *Harry Murphy, et al.*, 37 NLRB No. 80, truckers owning trucks under no detailed supervision, but working for one company.

The cases finding no employment relation are: *Daniel Creek & Logging Co.*, 13 NLRB 184, fallers and buckers using own equipment over whom the company has no control; *Markham & Callow, Inc.*, 13 NLRB 963, boomers and truckers owning own equipment over whom company has no control; *Federal Ice & Cold Storage Co.*, 18 NLRB 161, retail ice distributors who control own routes and purchase ice from more than one ice making company; *Theurer Wagon Works, Inc.*, 18 NLRB 837, 869-870, artist working on piece basis for others as well; *Houston Chronicle Publishing Co.*, 28 NLRB No. 155, newsboys under no supervision selling other articles and other newspapers; *Palmer-Berg*, 35 NLRB No. 74, truck owners hauling for others; *Paramount Pictures, Inc., et al.*, 33 NLRB No. 82, piece-work readers working at home for more than one company.

In the light of this principle, it must be held the plaintiff was seeking an injunction against its own employees, their union, other employees in the same industry and occupation, and other persons having a direct or indirect interest therein.

What is the dispute in this case? It is over the contract offered by the Union, requiring the plaintiff to deal with its members only, and enforced by the provisions of the Union constitution prohibiting Union members from delivering catches outside the Union agreement. The findings of fact expressly declare that there is no dispute over the price of fish or any other matter between the plaintiff and the fishermen. (R. 65-66, 76) Surely, this condition of exclusive employment is a term or condition of employment as to the five fishermen using boats under a lease arrangement with the plaintiff. It is a condition of employment for the fishermen on the boats owned and operated by Marks and Chase. And as to the Union, representing these employees and the independent fishermen and their employees, it is both a term or condition of employment and a question concerning the association or representation of such persons, regardless of the proximate relation of employer and employee.

Milk Wagon Drivers Union v. Lake Valley Food Products, Inc., supra.

New Negro Alliance v. Grocery Co., 303 U. S. 552, 58 S. Ct. 703.

Lauf v. Shinner & Co., supra.

Senn v. Tile Layers Protective Union, 301 U. S. 468, 57 S. Ct. 857.

The unity of interest between the fishermen who own and operate their own boats, on the one hand, and the

fishermen who are employees of the plaintiff and other boat owners; on the other hand, does not make this a case of a combination between employees and non-labor groups such as was condemned in *United States v. Brims*, 272 U. S. 549, 47 S. Ct. 169, or disapproved in *United States v. Hutcheson*, 312 U. S. 219, 232, 61 S. Ct. 463, 466.

This is rather a case where, due to the particular conditions of the industry, workers and owner-workers have a joint interest as such in their mutual conditions of employment. It arises from the fact that fishermen work together in crews of not more than three, and workers and working boat owners receive their remuneration by a common division of the price of the catch, which is paid by the fish dealers, including the plaintiff, who own and operate their own fleet of boats or buy from independent fishermen and their crews.*

* It is necessary at this point to recall to the Court the fact that the fishing industry has a unique method of remunerating employees. That method is known as the "share" or "lay" basis. We quote from an official study of the United States Department of Labor, entitled "Earnings and Methods of Payment in the Fishing Industry":

"A distinguishing feature of the fishing industry is the wide variety in the methods of wage payment. Compensation both by straight wages on a time basis and by piece rates exists. In the marine fisheries, however, by far the most common plan is to pay each member of the crew by a share in the value of the catch. Under this plan the compensation received by individual fishermen is primarily dependent on the quantity of fish caught and the unit price received for them, and secondarily on the items deducted from the gross revenue before arriving at the crew's share.

"The arrangement whereby the value of the catch of a fishing craft working on shares is distributed among the persons and interests concerned is known as a "lay." A share fisherman may receive a wage or a bonus on a time or percentage basis in addition to or in lieu of a share in a lay. This arrangement, however, ordinarily applies only to persons with exceptional responsibility, such as the captain, mate, or pilot; or to members of the crew engaged in specialized work, such as the engineer, fireman, radio operator, or cook." (*Monthly Labor Review*, September 1936, United States Government Printing Office, Series No. 3437.) See, *The Elk*, *supra*, 1938 A. M. C. at p. 725.

While the findings of fact do not specifically deal with this condition, it is nevertheless set forth in paragraph III of the Answer (R. 23), and there is nothing in the findings of fact which are inconsistent therewith. Indeed the findings set forth that the owners of the fishing boats to a "substantial extent employ the labor of others to assist them, in carrying on their fishing operations." (R. 56).

Moreover, the plaintiff alleged and the District Court found that the defendant union is a fishermen's cooperative organized under the federal statutes. (15 U. S. C. Secs. 521-522) We shall deal later with the significance of this cooperative aspect of the defendant union. At this point, we submit that the narrow line between a cooperative and a union in the fishing industry does not erect a barrier against the immunities of the Norris-LaGuardia Act. Thus, a cooperative has been defined as:

"A union of individuals, commonly laborers or small capitalists, formed for the prosecution in common of a productive enterprise, the profits being shared in connection with the amount of capital or labor contributed by each member." (18 C. J. S. p. 127)

In *Tobacco Growers Coop. v. Jones*, 185 N. C. 265, 276, 117 S. E. 174, 179, cited with the approval in the case of *Liberty Warehouse v. Burley Tobacco Growers*, 276 U. S. 71, 48 S. Ct. 291, the Court said:

"In effect the cooperative system is the most useful movement ever inaugurated to obtain justice for and improve the financial condition of farmers and laborers."

See, *Mooney v. Farmers Mercantile & Elevator Co.*, 138 Minn. 199, 164 N. W. 804.

We submit that this case is governed by the principles already laid down by this Court and that it is one growing out of a labor dispute within the meaning of the Norris-LaGuardia Act.

II. THE RECORD IN THIS CASE FAILS TO SHOW ANY VIOLATIONS OF THE ANTITRUST LAWS UPON WHICH ANY RELIEF, INJUNCTIVE OR OTHERWISE, COULD BE GRANTED.

The second branch of our argument is based upon the proposition that neither the complaint, nor the findings of fact herein show any cause of action whatsoever under the antitrust laws. It would follow that regardless of whether or not this is a "labor dispute," the decree of the District Court should be set aside in its entirety. All parts of the decree are before this Court. (See Statement of Points on Appeal, R. 129-134) The respondents as appellants before the Circuit Court of Appeals objected to each portion of the decree except paragraph "I" thereof holding that the plaintiff is engaged in commerce among the several states and with foreign nations within the meaning of the antitrust laws. (R. 107)

Assuming that the record is sufficient, disposition of the entire case can be made here. In any event, the portions of the decree granting an injunction are clearly before this Court and the declaratory portions of the decree holding the contracts invalid are so connected with the injunction that they should be dealt with together. Since the damages authorized by the original decree were waived by the plaintiffs and the decree amended accordingly (R. 121-123), a decision on the validity of the injunction and the declaratory adjudication would completely dispose of the case.

Viewing this case apart from the Norris-LaGuardia Act, we see that it involves a single question: May a combination of fishermen endeavor to perfect their organization to achieve through their organization complete control over the capture of fish and the delivery

thereof to fish dealers. Other issues, such as prices or price-fixing, exclusion of competitors, or combinations with non-producers, are not before this Court.

This is the only question set forth in the Complaint and the Findings of Fact. Petitioner's attempt now to argue that price-fixing is involved runs directly counter to its own allegation, embodied in the Findings of Fact, that:

"said market price for fish in said area is established is said trade organization (Union) in agreement with the various dealers, including the plaintiff, who purchase fish in said area, and as aforesaid, there was no disagreement between the plaintiff and the fishermen selling fish to the plaintiff over the price thereof, or over any other matter entering into the business between said plaintiff and said fishermen, and except for the interference, by the defendants with business relations between said plaintiff and said fishermen, said fishermen would have continued to catch fish and sell and deliver same to plaintiff." (R. 13)

While the petitioner charged in paragraph XIV of its Complaint that the defendants entered into a plan to "control the marketing and price of all fish products," the only acts alleged in support thereof are the efforts of the defendants to obtain the exclusive contract. (R. 14) In the same way, the findings of fact of the District Court specifically deal with the exclusive contract and the corresponding provisions of the Union constitution and by-laws, and the charge of monopoly is only a conclusion of law drawn from these facts.

The organization in question is an unincorporated association. Whether it is a labor union or a fishermen's cooperative authorized by the federal statute makes no difference. The only issue is whether the laws

of the United States dealing with labor unions and with producers' cooperatives have guaranteed to such organizations immunity from the antitrust laws so far as the perfection of their organization is concerned.

Assuming that the Union is a labor union, we think is settled beyond dispute that, under the antitrust laws, a labor union may make an agreement with the employers in the industry requiring that all employees belong to the union. And this immunity exists regardless of the extent of the union's membership. It may be by a union which has 100 percent of the employees and is dealing with all of the employers in the industry. The effect of all-union conditions in an industry is two-fold:

- (a) To eliminate competition throughout the industry among employees in the sale of their services to the employer;
- (b) To eliminate competition throughout the industry among employers based upon differences in labor standards.

This Court in the *Apex* case squarely ruled that these effects upon commerce are not subject to the prohibitions of the antitrust laws. It said:

"A combination of employees necessarily restrains competition among themselves in the sale of their services to the employer; yet such a combination was not considered an illegal restraint of trade at common law when the Sherman Act was adopted, either because it was not thought to be unreasonable or because it was not deemed a 'restraint of trade.' Since the enactment of the declaration in Section 6 of the Clayton Act that 'the labor of a human being is not a commodity or article of commerce . . . nor shall such (labor) organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws,' it would seem plain that re-

straints on the sale of the employee's services to the employer, however much they curtail the competition among employees, are not in themselves combinations or conspiracies in restraint of trade or commerce under the Sherman Act.

Strikes or agreements not to work, entered into by laborers to compel employers to yield to their demands, may restrict to some extent the power of employers who are parties to the dispute to compete in the market with those not subject to such demands. But under the doctrine applied to non-labor cases, the mere fact of such restrictions on competition does not in itself bring the parties to the agreement within the condemnation of the Sherman Act, *Appalachian Coals, Inc., v. United States*, *supra*, 288 U. S. 360, 53 S. Ct. 474, 77 L. Ed. 825, *supra*.

Furthermore, successful union activity, as for example consummation of a wage agreement with employers, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards. Since, in order to render a labor combination effective it must eliminate the competition from non-union made goods, see *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 209, 42 S. Ct. 72, 78; 66 L. Ed. 189, 27 A. L. R. 360, an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act. See, *Levering & G. Co. v. Morrin*, *supra*; cf. *American Foundries case*, *supra*, 257 U. S. 209, 42 S. Ct. 78, 66 L. Ed. 189, 27 A. L. R. 360, *supra*; *National Assn. of Window Glass Manufacturers v. United States*, 263 U. S. 403, 44 S. Ct. 148, 68 L. Ed. 358. And in any case, the restraint here is, as we have seen, of a different kind and has not been shown to have any actual or intended effect on price or price competition." (310 U. S., at pp. 502-504; 60 S. Ct., pp. 997-998)

A. F. of L. v. Swing, 312 U. S. 321, 61 S. Ct. 568.

Senn v. Tile Layers Protective Union, *supra*.

National Protective Assoc. v. Cumming, 170 N.Y. 315, 63 N.E. 369, 58 L. R. A. 135.

National Fire Proofing Co. v. Mason Builders' Association, 2nd Cir., 169 F. 259.

Edelstein, v. Gillmore, 2nd Cir., 36 F. (2d) 81, cert. den. 280 U. S. 607.

F. F. East Company, Inc. v. United Oystermen's Union, No. 19600, 128 N. J. Eq. 27, 15A (2d) 129.

Kingston Trap Rock Co. v. Local 825, 129 N. J. Eq. 570, 19A (2nd) 661.

Williams v. Quill, 277 N. Y. 1, cert. den. 303 U. S. 621, 58 S. Ct. 650.

McKay v. Retail Automobile Salesmen's Local No. 1067, 16 Cal. (2d) 311, 106 P. (2d) 373, cert. den. 313 U. S. 566, 61 S. Ct. 939.

The All-Union Shop in the Courts (June 1938), 6 I. J. A. 147.

Turning to the alternative and undisputed view that the respondent Union here is not a labor union, but a legal fishermen's cooperative, the same conclusion applies. The perfected organization of such a producers' cooperative is likewise immune from the antitrust laws.

The federal statute authorizing marketing cooperatives specifically provides that:

"Persons engaged in the fishing industry as fishermen . . . may act together in associations, corporate or otherwise, . . . in collectively, producing, preparing for market, processing, handling and

marketing for interstate and foreign commerce such products of said persons to engaged. . . . Said associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes. . . ." (15 U. S. C. Sec. 521)

The next section authorizes the Secretary of Commerce to proceed against any association for an injunction if

"The Secretary of Commerce shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any product is unduly enhanced by reason thereof. . . ." (15 U. S. C. Sec. 522)

The legislative history of this section is brief. The Committee Report stated that:

"The purpose of this bill is to provide for the fishery industry cooperative associations such as are provided for farmers by the Capper-Volstead Act. (Ch. 57, 42 Stat. 388, U. S. C. Title 7, Sec. 29-2) This bill is identical with that Act except that this bill applies to producers of aquatic products and not to farmers."

The Report further^o quoted the testimony of the Chief of the Division of Fishery Industries of the United States Bureau of Fisheries:

"As a corollary to this disorganized situation, and because credit is dried up, during the emergency, we have witnessed the industry indulging in destructive price cutting and other destructive practices which have reflected largely on the fishermen, resulting in lowering income to the point where their very livelihood is in jeopardy. Thus the very evils which the Administration is trying to correct are

practically apparent in the fishery industry, namely, the volume of the products of the industry in interstate and foreign commerce has been diminished; the capacity of production units has been decreased; the necessity for organization among trade groups is everywhere apparent; and because of destructive price cutting, the purchasing power of fishermen and processors has been reduced; thousands of earners have been thrown out of regular employment, and one of our great natural resources is being exploited unwisely." (Report accompanying H. R. 9233, 73d Cong. 2d Sess. Report No. 1504)

There was very little debate on the bill. It was called on the House consent calendar on May 31st, 1934, and Congressman Bland, its sponsor and chairman of the reporting committee, stated:

"The statement I want to make is simply that this bill provides for the same relief to the fishermen that has already been given to the farmers. There is no change in the law except that it is made applicable to fishermen. Their desperate condition throughout the country, as well as their desire to organize in order to better themselves, is the basis of this legislation." (78 Cong. Rec. 9175)

The bill was objected to on the ground that voluntary cooperatives had not helped producers very much. But on June 7th, 1934, the bill was again called on the consent calendar and this time it was passed. (78 Cong. Rec. 10745) In the Senate, the bill was passed on the consent calendar without debate. (June 18th, 1934, 78 Cong. Rec. 12421)

We believe that the legislative history makes one thing particularly clear, namely, that Congress favors the complete organization of fishermen into cooperatives. And the desperate conditions of fishermen in general which gave rise to the enactment of the law are found to be

present in this particular case, giving rise to the formation of the Union. (Findings of Fact XXXVIII, XLVI, R. 88, 93)

We submit that the purpose of the statute embraces the complete organization of fishermen into a cooperative which will handle their product and govern their dealings with those to whom their catch is delivered and sold. We submit that so long as the only activities challenged by a suit under the antitrust laws relate to efforts of a cooperative to make the cooperative the exclusive agency representing the producers, then the only thing before this Court is the combination of producers *per se*, and such a combination *per se* cannot be held to be a violation of the antitrust laws.

The District Court expressly found that there was an "open, competitive market" for fish and other marine products on the Pacific Coast. Its decree rests solely upon the conclusion that the exclusive contracts tend to create a monopoly. (R. 74) But that combination is exactly what both the federal cooperative law and Section 6 of the Clayton Act protect.* See *United States v. Rock Royal Co-op.*, 307 U. S. 533, 562, 59 Sup. Ct. 993, 1008.

The judicial decisions dealing with cooperatives have given full effect to this legislative policy. They have ruled that the efforts of cooperatives to obtain exclusive dealings for their members are immune from the antitrust laws.

Liberty Warehouse v. Burley Tobacco Growers, supra.
Tobacco Growers Coop. v. Jones, supra.

* Clayton Act, Sec. 6, 38 Stat. 713, 15 U. S. C. Sec. 17. While a fisherman's cooperative is not, strictly speaking, an agricultural or horticultural organization named in this section, it is embraced within the federal policy as expressed therein.

Olympia Mill Products Assoc. v. Herman, 176 Wash. 338, 29 P. (2) 676.

High Grade Dairies v. Fall City Milk Producers Association, 261 Ky. 25, 86 S. W. 2, 1046.

In the *Liberty Warehouse Company* case, suit was brought by a tobacco growers cooperative under the state act, authorizing such cooperatives, against a warehouse which had accepted tobacco from a cooperative member in violation of the member's agreement with the cooperative to deliver his products exclusively to it. The statute imposed penalties in the form of fines, injunctions and misdemeanors upon any warehouse accepting tobacco from a member in breach of his exclusive agreement with the cooperative.

The issue before the Court was whether such an exclusive agreement between the cooperatives and its members was in violation of the antitrust laws. The Court held that it was not, and upheld the penalty clauses imposed by the state statute. In justification, the Court quoted from the opinion of the state court in the case of *Dark Tobacco Growers Coop. v. Dunn*, 150 Tenn. 614, 266 S. W. 308:

"For each pound of tobacco which is not delivered to the association by a member, there is a pro rata increase in the operating costs of the association; and that increase cannot be estimated in terms of money with definite exactness. For every defection of one member, there is a certain amount of dissatisfaction, engendered among other members; indeed other members are not encouraged to deliver their tobacco and *the normal increase of the association's membership is prevented.*" (Italics added)

The Court then went on to say, in its own words, that

"The opinion generally accepted—and upon reasonable grounds, we think, is that the cooperative marketing statutes promote the common interest. The provisions for protecting the fundamental contracts against interference by outsiders are essential to the plan. This Court has recognized as permissible some discrimination intended to encourage agriculture."

In the *Olympia Milk Producers Association* case, the agreement between the members and the cooperative provided that a member would not

"sell or dispose of his milk or dairy products to or through any person, firm or corporation other than the association."

The Court granted specific enforcement of this provision, although it was in a contract authorized by the state law binding the member for a ten-year period.

We say that the same policy, which protects a cooperative in obtaining exclusive dealings from its members, entitles it to obtain exclusive dealings from the dealers purchasing the products of its members. The specific practices of fixing prices, excluding commercial competition or restricting production, are, we repeat, not before this Court.* What we are saying is that so long as the action of the cooperative is related only to the protection of its organization in securing exclusive relations between all the producers on the one hand, and all of the dealers on the other hand, there is no violation of the antitrust laws because this is the end promoted, encouraged and favored by the policy behind the statutes and the judicial decisions favoring cooperative action.

* The recent decision in *Manaka v. Monterey Sardine Industries, Inc.*, D. C. N. D. Cal. S. Div. Oct. 20, 1944, 4 Lab. Cases, Par. 60, 731, may be distinguished as a case involving the unjustifiable exclusion of competitors.

If the cooperative in the *Liberty Warehouse* case could require its members to deliver all their goods to them, then under the same policies and principles it can require that the dealers will buy only from the cooperative and not from non-members.

If the State of Kentucky in the *Liberty Warehouse* case could lawfully impose legal penalties upon dealers who accept goods from those who breach their exclusive agreements with the cooperatives, then the cooperative itself is entitled to use its own economic strength to compel dealers to refrain from purchasing from any one who is not a member of the cooperative.

A decision denying to cooperatives in this case, the right to demand exclusive dealings from purchasers of the products of its members is only another way of saying that a cooperative may not use its bargaining power to protect and extend its organization.

This Court has recognized the privilege of a cooperative to use its economic power to secure exclusive arrangements with dealers. In the case of *United States v. Rock Royal Cooperative, supra*, a dealer or handler refusing to abide by a milk marketing Order under the Agricultural Marketing Act of 1937, rested upon two defenses, among others, (a) that the producers cooperatives had used coercion to secure the adoption of the Order, and (b) that the Order gave discriminatory favors to such cooperatives. Of the first, this Court said:

"These tactics consisted of threats to handlers that if they did not comply with the Order, the producers would withhold delivery of milk. These schemes, the lower court determined, were so successful in securing the drafting, adoption and acceptance of the Order that a conspiracy to monopolize interstate commerce contrary to the Sherman

Antitrust Act, was established . . . We do not agree . . . *The coercion by the League . . . is the partisan coercion of the producer seeking to compel dealer support of the plan by the threat of the use of his economic power over his own milk.*" (307 U. S. at pp. 558, 559, 59 S. Ct. at pp. 1005-1006) (Italics added)

Of the second, this Court said:

"These agricultural cooperatives are the means by which farmers and stockmen enter into the processing and distribution of their own crops and livestock. The distinctions between such cooperatives and business organizations have repeatedly been held to justify different treatment." (Id. p. 563, 1008)

The same problem arose in the Kentucky case of *High Grade Dealers v. Fall City Milk Producers*, supra, where the Court said:

"Appellant, claiming that he had been in the milk distributing business for a long time, and that he had built up a sizeable business, which had at all times been operated in accordance with the ordinances of the city, relating to the sale of milk, filed suit against the appellees for damages to his business, and sought an injunction against them to prevent alleged interferences with the conduct of his business. . . .

The plaintiff's right to recover damages can be easily disposed of. The burden of his complaint is that the activities of the defendants tortuously prevented his getting sufficient milk to serve his customers to the consequent damage of his business. Conceding that there were periods during which plaintiff could not procure enough milk to meet his needs because of the actions of the Association, it by no means follows that there can be a substantial recovery. The gist of his action is his failure to get

milk. Prior to the inception of the alleged torts of the Association he was buying his milk from producers who were members of the Association and from some who were not members. *The Association was free at any time to refuse to sell the milk of its members and free to refuse to let its members sell their milk to him direct. . . . It is clear that the major portion of his milk shortage was caused by the legitimate and proper act of the Association in refusing to let its members' milk go to one who was openly hostile!*" (Italics added)

The instant case is to be distinguished from the case of *United States v. Borden*, 182 U. S. 308, 60 S. Ct. 188, because no question of combining with non-producers groups or of prices, exclusion of competitors, or other practices of restricted production or suppression of competition, are involved.

In fact, the *Borden* case recognizes the right of producers to unite together and condemns only the very things which are expressly found to be absent in this case. We think this Court summarized the holding of the *Borden* case holding in the following excerpt:

"The right of these agricultural producers thus to unite in preparing for market and in marketing their products, and to make the contracts which are necessary for that collaboration, cannot be deemed to authorize any combination or conspiracy with other persons in restraint of trade that these producers may see fit to devise. In this instance, the conspiracy charged is not that of merely forming a collective association of producers to market their products but a conspiracy, or conspiracies, with major distributors and their allied groups, with labor officials, municipal officials, and others, in order to maintain artificial and non-competitive prices to be paid to all producers for all fluid milk produced in Illinois and neighboring States and"

marketed in the Chicago area, and thus in effect, as the indictment is construed by the court below, 'to compel independent distributors to exact a like price from their customers' and also to control 'the supply of fluid milk permitted to be brought to Chicago.' 28 F. Supp. at pages 180-182. Such a combined attempt of all the defendants, producers, distributors and their allies, to control the markets finds no justification in Section one of the Capper-Volstead Act." (308 U. S. at pp. 204-205, 60 S. Ct. at p. 191)

The findings of fact in this case state that there is an open and competitive market for fish and other marine products on the Pacific Coast, that the defendants will accept into membership any able-bodied fisherman who is willing to comply with its constitution and by-laws, that the defendant is willing to sell fish to any fish dealer who will accept its contract for exclusive dealings, that the respondent-defendants do not prevent the plaintiff from operating its own fishing fleet if it so desires, and that there is no evidence tending to show that the wholesale or retail prices paid by consumers have been enhanced by the activities of these defendants.

We submit that in the light of these findings, the fishermen's cooperative Act is the exclusive remedy against any tendency on the part of the combination *per se* to result in any monopoly or restraint of trade. In the *Borden* case the Court, dealing with an analogous provision of the Capper-Volstead Act, said:

"We think that the procedure under Section two of the Capper-Volstead Act is auxiliary and was intended merely as a qualification of the authorization given to cooperative agricultural producers by Section one, so that if the collective action of such producers, as there permitted, results in the opinion of the Secretary in monopolization or unduly en-

hanced prices, he may intervene and seek to control the action thus taken under Section one. But as Section one cannot be regarded as authorizing the sort of conspiracies between producers and others that are charged in this indictment, the qualifying procedure for which Section two provides is not to be deemed to be designed to take the place of, or to postpone or prevent, prosecution under Section one of the Sherman Act for the purpose of punishing such conspiracies." 308 U. S. at p. 206, 60 S. Ct. at p. 192.

These findings show that the only action involved herein is the collective action of the producers, directly permitted and encouraged by the fishermen's cooperative Act. It may be assumed that a fishermen's cooperative will make contracts relating to the marketing of its product which will cover "the catching, reducing to possession and ownership, sale and delivery of fish." (R. 108) But the very purpose of the Cooperative Act is to exempt from the antitrust laws fishermen's cooperatives formed for the purpose of marketing their products. That this is the essence of the exemption can be seen by contrast with commercial combinations. In the case of *U. S. v. Socony Vacuum Oil Co.*, 310 U. S. 150, 60 S. Ct. 811; the defendants argued that they were entitled to combine in order to meet "competitive abuses." But, said the Court:

"Congress has not left with us the determination of whether or not particular price-fixing schemes are wise or unwise, healthy or destructive. It has not permitted the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing conspiracies. It has no more allowed genuine or fancied competitive abuses as a legal justification for such schemes than it has the good intentions of the members of the combination. If such a shift is to be made, it must be done by the Congress. Cer-

tainly Congress has not left us with any such choice. Nor has the Act created or authorized the creation of any special exception in favor of the oil industry." 310 U. S. at p. 221, 60 S. Ct. at p. 843.

Congress has created and authorized a special exception in favor of the fishing industry. The policy behind this exception has recently been stated by this Court, in terms applicable to the case at bar:

"These large sections of the population—those who labored with their hands and those who worked the soil—were as a matter of economic fact in a different relation to the community from that occupied by industrial combinations. Farmers were widely scattered and inured to habits of individualism; their economic fate was in large measure dependent upon contingencies beyond their control. In these circumstances, legislators may well have thought combinations of farmers and stockmen presented no threat to the community, or, at least, the threat was of a different order from that arising through combinations of industrialists and middlemen. At all events legislation like that of Texas rested on this view, curbing industrial and commercial combinations, and did not visit the same condemnation upon collaborative efforts by farmers and stockmen because the latter were felt to have a different economic significance." *Tigner v. Texas*, 310 U. S. 141, 145, 60 S. Ct. 879, 881.

In the light of the *Borden* case, the findings herein dispose of any possible claim of "conspiring producers, distributors and their allies." Notwithstanding the conclusions of the District Court, (R. 101) there is no combination within the meaning of the antitrust laws between the respondent Union and the respondent fish dealers, Marks and Chase, because the Union was willing to deal with the plaintiff upon the same terms as with these and other fish dealers.

No other facts in the record of this case show any violation of the antitrust laws. The reference to the use of "threats, intimidation and coercion" by the respondents (R. 63) turns out to be only the exercise of its discipline against breaching members who have made exclusive agreements with it. (R. 83-84) Such action is clearly protected by the ruling of the *Liberty Warehouse* case, which also protects the refusal of the respondent union to accept into membership, fishermen who would not agree to exclusive membership. (R. 69-70) The supporting action of other maritime organizations in refusing to work for the plaintiff in its processing and canning operations (R. 94) is clearly action within the same industry by groups having common interests, and therefore within the area of allowable economic conflict.

The great Brandeis stated the fundamental issue involved in this case in his dissenting opinion in the case of *Liggett & Co. v. Lee*, 288 U. S. 517, 579, 53 S. Ct. 481, 501. He said:

"The citizens of Florida might conceivably escape from the domination of giant corporations by having the state engage in business . . . But Americans seeking escape from corporate domination have open to them under the Constitution another form of social and economic control—one more in keeping with our traditions and aspirations. They may prefer the way of co-operation, which leads directly to the freedom and equality of opportunity which the 14th Amendment aims to secure. That way is clearly open. For the fundamental difference between capitalist enterprise and the cooperative—between economic absolutism and industrial democracy—is one which has been accepted by the legislatures and the courts as justifying discrimination in both regulation and taxation. *Liberty Warehouse Co. v. Burley Tobacco Growers' Coop.*, 276 U. S. 71, 48 S. Ct. 291, 72 L. Ed. 473."

The defendant cooperative in this case is asking only that it be allowed to withhold its group action from any dealer who refuses to recognize it as the exclusive agency for its members. If the principle of cooperation is sound, then the exercise of economic power to promote and establish cooperatives must be allowed.

The plaintiff, a large corporation selling to consumers and buying from fishermen 60% of the fish produced in the state of Oregon and a very substantial amount of the fish produced in Washington and Alaska, is confronted with the economic action of a fishermen's cooperative that has secured 90 to 100% membership among the fishermen, exercising their economic strength to protect their cooperative organization. The plaintiff wants the help of the courts to break the cooperatives and to be free to use its own uncontrolled economic power against the disbanded fishermen.

CONCLUSION

It is respectfully submitted that the decree of the District Court herein should be vacated and the complaint of the petitioner should be dismissed.

LEE PRESSMAN,

JOSEPH KOVNER,

ANTHONY WAYNE SMITH,

BEN ANDERSON,

Attorneys for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 142.—OCTOBER TERM, 1941.

Columbia Rivers Packers Association, Inc., Petitioners,

vs.

H. B. Hinton, George Bambrick, J. B. Brandt, Charles J. Mackie, Glenn Murdock, Ferdinand Sandness, P. J. Barton, Jack Curtis, Leroy Chenoweth, Walter Weaver, O. Tanner, O. H. Brown, Newton Cannon, Wm. Scholtens, Roy Reavis, Arthur Hertel, Harry Ansama, Jack Ansama, J. W. Beecroft, Henry Boye, Willis Koogler, Leo Lyster, Lyle Lyster, Lawrence Noel, Garth Phillips, Carl Pyrtz, W. A. Pyrtz, Andy Toppi, Charles Pilton, Charles Marks, Clyde Chase and Pacific Coast Fishermen's Union, Its Officers and Members.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[February 2, 1942.]

Mr. Justice BLACK delivered the opinion of the Court.

The petitioner filed a bill for an injunction charging that the respondents attempted to monopolize the fish industry in Oregon, Washington, and Alaska, in violation of the Sherman Act. 26 Stat. 209. The Norris-LaGuardia Act declares that no federal court shall, except under certain specified circumstances, have jurisdiction to issue an injunction in any case which involves or grows out of a "labor dispute."¹ The jurisdictional requirements were not present here. But the District Court held that since this case did not involve or grow out of a "labor dispute", these requirements were

¹ " . . . no court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act. . . . " 47 Stat. 70.

2 *Columbia River Packers Association, Inc. vs. Hinton et al.*

irrelevant; and finding that the respondents had violated the Sherman Act to the injury of the petitioner, issued the injunction sought. 34 F. Supp. 970. The Circuit Court of Appeals reversed, holding that a "labor dispute" was involved and that the District Court was therefore without jurisdiction to enjoin. 117 F. 2d 310. To review this question, we granted certiorari. 314 U. S. —.

The petitioner has plants for processing and canning fish in Oregon, Washington, and Alaska. It distributes its products in interstate and foreign commerce. Its supply of fish chiefly depends upon its ability to purchase from independent fishermen. The dispute here arose from a controversy about the terms and conditions under which the respondents would sell fish to the petitioner.

The respondents are the Pacific Coast Fishermen's Union, its officers and members,² and two individuals who, like the petitioner, process and sell fish. Although affiliated with the C. I. O., the Union is primarily a fishermen's association, composed of fishermen who conduct their operations in the Pacific Ocean and navigable streams in Washington and Oregon and some of their employees. The fishermen own or lease fishing boats, ranging in value from \$100 to \$15,000, and carry on their business as independent entrepreneurs, uncontrolled by the petitioner or other processors.

The Union acts as a collective bargaining agency in the sale of fish caught by its members. Its constitution and by-laws provide that "Union members shall not deliver catches outside of Union agreements", and in its contracts of sale it requires an agreement by the buyer not to purchase fish from nonmembers of the Union. The Union's demand that the petitioner assent to such an agreement precipitated the present controversy. Upon the petitioner's refusal, the Union induced its members to refrain from selling fish to the petitioner, and since the Union's control of the fish supply is extensive the petitioner was unable to obtain the fish it needed to carry on its business.

We think that the court below was in error in holding this controversy a "labor dispute" within the meaning of the Norris-LaGuardia Act. That a dispute among businessmen over the terms of a contract for the sale of fish is something different from a "controversy concerning terms or conditions of employment, or concerning the association . . . of persons . . . seeking to

² Two of the respondents, although members of the Union, are not fishermen. They are buyers for processors.

arrange terms or conditions of employment" calls for no extended discussion. This definition and the stated public policy of the Act—aid to "the individual unorganized worker . . . commonly helpless . . . to obtain acceptable terms and conditions of employment" and protection of the worker "from the interference, restraint, or coercion of employers of labor"—make it clear that the attention of Congress was focussed upon disputes affecting the employer-employee relationship, and that the Act was not intended to have application to disputes over the sale of commodities.³

We recognize that by the terms of the statute there may be a "labor dispute" where the disputants do not stand in the proximate relation of employer and employee. But the statutory classification,⁴ however broad, of parties and circumstances to which a "labor dispute" may relate does not expand the application of the Act to include controversies upon which the employer-employee relationship has no bearing. Our decisions in *New Negro Alliance v.*

³ Cf. Section 6 of the Clayton Act: " . . . the labor of a human being is not a commodity or article of commerce." 38 Stat. 731. The Norris-La-Guardia Act, manifesting "the purpose of the Congress further to extend the prohibition of [Section 20 of] the Clayton Act", *New Negro Alliance v. Grocery Co.*, 303 U. S. 552, 562, cannot be taken as having erased the distinctions between an association of commodity sellers and an association of employees. Specific recognition by Congress of associations of fishermen as sellers of commodities has been given in an act "Authorizing associations of producers of aquatic products." 48 Stat. 1213.

⁴ Section 13 of the Act provides:

"When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employees or associations of employees; or (3) between one or more employees or associations of employees and one or more employers or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) or 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 47 Stat. 73.

4 *Columbia River Packers Association, Inc. vs. Hinton et al.*
Grocery Co., 303 U. S. 552, and *Drivers' Union v. Lake Valley Co.*,
311 U. S. 91, give no support to the respondents' contrary conten-
tion, for in both cases the employer-employee relationship was the
matrix of the controversy.

The controversy here is altogether between fish sellers and fish buyers. The sellers are not employees of the petitioners or of any other employer nor do they seek to be. On the contrary, their desire is to continue to operate as independent businessmen, free from such controls as an employer might exercise. That some of the fishermen have a small number of employees of their own, who are also members of the Union, does not alter the situation. For the dispute here, relating solely to the sale of fish, does not place in controversy the wages or hours or other terms and conditions of employment of these employees.

We are asked to consider other contentions pressed by the respondents which it is said would support the reversal below. But the Circuit Court neither canvassed nor passed upon these contentions. It will be free to do so upon remand.

Reversed.

Mr. Justice ROBERTS and Mr. Justice DOUGLAS took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

